

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21035

Application 30560 of **Robin R. Moerman**
 11500 Burris Lane
 Potter Valley, CA 95469

filed on **August 22, 1996**, has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source	Tributary to
<u>Unnamed Stream</u>	<u>East Fork Russian River</u>
	<u>thence Russian River</u>

within the County of **Mendocino**

2. Location of point of diversion

By California Coordinate System in Zone #2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
POD#1; North 589,125 feet and East 1,696,950 feet	SW¼ of SW¼	34	17N	11W	MD
PORD#1; North 590,000 ft and East 1,694,500 ft	SW¼ of SE¼	33	17N	11W	MD
PORD#2; North 590,000 ft and East 1,696,000 ft	SW¼ of SW¼	34	17N	11W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Recreation	At Reservoirs					
Fire Protection	SW$\frac{1}{4}$ of SE$\frac{1}{4}$	33	17N	11W	MD	
	SW$\frac{1}{4}$ of SW$\frac{1}{4}$	34	17N	11W	MD	
Irrigation	NE$\frac{1}{4}$ of SE$\frac{1}{4}$	33	17N	11W	MD	40
Frost Protection	SE$\frac{1}{4}$ of SE$\frac{1}{4}$	33	17N	11W	MD	40
Heat Control	SW$\frac{1}{4}$ of SE$\frac{1}{4}$	33	17N	11W	MD	40
	SE$\frac{1}{4}$ of SW$\frac{1}{4}$	33	17N	11W	MD	10
	SW$\frac{1}{4}$ of SW$\frac{1}{4}$	34	17N	11W	MD	30
	SE$\frac{1}{4}$ of SW$\frac{1}{4}$	34	17N	11W	MD	40
					TOTAL	200

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1.045 cubic feet per second (20 acre-feet per annum) by direct diversion from May 1 to June 1 of each year, and a total of 165 acre-feet per annum to be collected from October 1 to June 1 of each year as follows: 67 acre-feet per annum in offstream reservoir #1 (PORD #1) (35 acre-feet storage and 32 acre-feet replenishment), and 98 acre-feet per annum in offstream reservoir #2 (PORD #2) (49 acre-feet storage and 49 acre-feet replenishment). The maximum amount of water diverted under this permit shall not exceed 185 acre-feet per annum.

(000005F)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses.

(000005I)

7. Complete application of the water to the authorized use shall be made by December 31, 2010.

(0000009)

8. Permittee shall install and maintain an outlet pipe of adequate capacity in the onstream dam in order that water entering the reservoir which is not authorized for appropriation under this

permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043AP)

9. For the protection of fish and wildlife, permittee shall during the period October 1 to June 1, bypass a minimum of fifty percent (50%) of the incoming flow of the Unnamed Stream. The total stream flow shall be bypassed outside of the authorized diversion season. Stream flows shall be measured at the device(s) required by the conditions of this permit. Permittee shall record the stream flow, as measured by the device(s), on everyday that water is diverted under this permit. A record of the stream flow measurements shall be submitted annually with the Progress Report of Permittee.

(0140060)

10. No water shall be diverted under this permit until permittee has installed a device(s), satisfactory to the SWRCB, which is capable of measuring the bypass flow required by the conditions of this permit. Before starting construction, permittee shall submit plans and specifications of the bypass flow measuring device(s) to the Chief of the Division of Water Rights for approval. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the bypass flow measuring device(s) has been installed. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

Permittee shall allow California Department of Fish and Game personnel reasonable access to the point of diversion in order to monitor compliance with the conditions of this permit.

(0060062A)

11. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 30564, shall not exceed 285 acre-feet per annum.

(0000114A)

12. This permit is specifically subject to any legally held prior rights of Vinifera Associates under appropriation identified in License 7240 (Application 13287), and Beckstoffer Russian River Vineyards under appropriation identified in License 6191B (Application 14916B).

(0160800)

13. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some to the previously listed items plus

fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0380500)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD
ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- (A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- (B) The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- (D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- (E) Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations

of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(G) This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

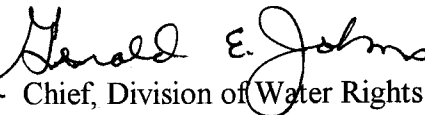
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: MAY 23 2000

STATE WATER RESOURCES CONTROL BOARD


for Chief, Division of Water Rights